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The Kleindienst Nomination (II)

One of the more advantageous aspects of the nomination of a sitting presidential appointee to the cabinet is that a bit of the guesswork is removed from the Senate's process of determining the nominee's fitness for office. This is particularly true when the nominee's prior service is in the department he is nominated to head. The man has a track record which can be examined and from which assumptions about the way he will conduct himself in the office for which he has been nominated can fairly be drawn. The Senate has such a fortuitous situation in the nomination of Richard G. Kleindienst to be Attorney General and it has an interesting case study in Mr. Kleindienst's handling, as Deputy Attorney General, of the matter of Harry Steward, United States Attorney for the Southern District of California.

In late 1969, federal agents investigating gambling in San Diego County became suspicious that a $2,068 payment made by the Yellow Cab Company in San Diego to an advertising agency had been, in fact, a concealed and improper contribution to the presidential election campaign of Richard M. Nixon in 1968. This suspicion and other facts developed in the investigation led to the impaneling of a grand jury in October, 1969. The grand jury issued a subpoena for Frank Thornton, executive vice president of the advertising agency. Following an unsuccessful attempt to serve the subpoena, the agents in charge of providing information to the grand jury were summoned to Mr. Steward's office.

Mr. Steward asked the agents about the Thornton subpoena and told them that he did not want it reissued. According to an affidavit sworn by David Stutz, one of the agents present at the meeting, Mr. Steward listed his close friendship with Mr. Thornton, and the fact that Mr. Thornton had gotten Mr. Steward his job as U.S. Attorney and was to try to get him a federal judgeship, as the reasons for quashing the subpoena. Mr. Steward said that he would talk to Mr. Thornton personally. Subsequently he did and reported to the agents that Mr. Thornton had explained the $2,068 item to his satisfaction. He also told the agents to stay away from the advertising agency.

Subsequently, while Agent Stutz was pursuing an unrelated investigation—this one outside the U.S. Attorney's jurisdiction—Mr. Steward again thrust himself between the advertising agency and the federal agent, stating, "I am the U.S. Attorney and I'll tell you what to do. I have told Barnes-Champ (the ad agency) they don't have to give you any records. You are not to contact them again."

Subsequently, and after Mr. Steward had been summoned to Washington for a private conversation with Mr. Kleindienst, an administrative inquiry, including an FBI investigation, was instituted by the Department of Justice into Mr. Steward's conduct in these matters.

After the inquiry had been concluded, the Deputy Attorney General issued a press release which read, in part, as follows: "These charges were exhaustively investigated by the bureau and a report was made to the department. I have evaluated the matter and determined there has been no wrongdoing." Subsequently, however, Mr. Kleindienst was to admit in his confirmation hearings that he had never actually read the FBI report on the matter.

During the course of the Kleindienst hearings, Henry Peterson, the Assistant Attorney General for the Criminal Division, testified that he had been involved in and aware of both the criminal investigation that led to the quashed Thornton subpoena and the administrative inquiry which followed it. He characterized Mr. Steward's conduct in this matter as "highly improper," but defended the department's public exoneration of Mr. Steward as necessary to sustain a positive image of the government's chief prosecutor in Southern California as he approached the prosecution of a major tax case.

Although the Judiciary Committee puzzlingly refused to pursue a number of obvious leads, such as calling the investigators whose work was thwarted, the record in this case is still fairly clear. Whatever Mr. Kleindienst's intentions were, the fact is that from February, 1971, when the Department of Justice issued its press statement publicly exonerating Mr. Steward, until March, 1972, when *Life* published the story, the matter had been covered up and apparently buried. The Department's action, it seems to us, was indefensible in itself, but the reason given for taking it was astonishing. The actions of a principal federal prosecutor in impeding two investigations by federal investigators were swept under the rug, according to testimony before the Judiciary Committee, in order to maintain public confidence in law enforcement. And Mr. Kleindienst was involved in and in charge of the process throughout.

So we would add the Steward case to that part of the record of Mr. Kleindienst's career as Deputy Attorney General to which we hope the Senate would give the most serious consideration as it weighs this nomination, for it seems to shed significant light on how the nominee might choose to maintain confidence in law enforcement if another high office in the field is entrusted to his hands. Yesterday, we discussed Mr. Kleindienst's inability or unwillingness to recognize a proposition made in his own office in the Department of Justice which federal prosecutors and a jury later decided was an offer of a bribe. Subsequently, we will discuss yet another event in the nominee's career, the ITT antitrust settlement, which we also believe the Senate should take heavily into account as it ponders how the cause of justice would be served by Mr. Kleindienst's stewardship as Attorney General of the United States.